

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KARAKI NAVIGATION,

Plaintiff,

- against -

BUNGE SA,

Defendant.

X

07 CV 6161 (NRB)
ECF CASE

**STIPULATION AND ORDER OF
DISCONTINUANCE WITHOUT PREJUDICE PENDING ARBITRATION**

WHEREAS, this action was commenced by the filing of a Verified Complaint by the Plaintiff on or about July 2, 2007 seeking, among other things, to attach property of the defendant in the district pursuant to Rule B of the Supplemental Rules For Certain Admiralty & Maritime Claims of the Federal Rules of Civil Procedure ("Supplemental Admiralty Rules"); and

WHEREAS, Plaintiff attached property of the Defendant totaling \$2,443,959.32, and Defendant has now provided Bank Guarantees and Letter of Undertaking from The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited ("LOU") as substitute security for the attached funds; and

WHEREAS, Defendant filed a Counterclaim on July 26, 2007, seeking damages of \$577,949.41, and demanding countersecurity for the counterclaim pursuant to Rule B of the Supplemental Admiralty Rules; and

WHEREAS, Plaintiff has posted countersecurity in the form of an interest bearing cash escrow totaling \$577,949.41, to be governed by an Escrow Agreement dated October 10, 2007 which, among other things, provides that the escrow funds are subject to further order of this Court; and

WHEREAS, both parties have obtained security for the full amount of the claims (as presently pled), the parties agree to arbitrate the merits of the disputes between them in London, England ("London arbitration"); and

WHEREAS, Defendant endeavors to reserve its rights, if any, to claim damages for wrongful attachment of its property, but concedes that any such claim is not a compulsory counterclaim in this action and that it cannot seek to reopen this action for any purpose relating to the purported claim for wrongful attachment;

IT IS THEREFORE STIPULATED AND AGREED that this action be discontinued without prejudice or costs to either party pursuant to FRCP Rule 41, subject to the right to reopen the matter by letter request from counsel for either party requesting the matter be restored to the court's active docket solely for the purpose of filing a motion to increase or decrease the amount of security provided by the parties, or to vacate the attachments pursuant to the Supplemental Rules For Certain Admiralty & Maritime Claims of the Federal Rules of Civil Procedure or to confirm or enforce any final arbitration awards issued by the London arbitrators pursuant to 9 U.S.C. § 201 et seq.; and

IT IS FURTHER STIPULATED AND AGREED that the cash escrow totaling \$577,949.41 is subject to the parties' Escrow Agreement dated October 10, 2007 and further order of this Court;

IT IS FURTHER STIPULATED AND AGREED that the Bank Guarantees and LOU posted as substitute security by Defendant are subject to the further order of this Court;

IT IS FURTHER STIPULATED AND AGREED that any claim asserted by Defendant for damages relating to the alleged wrongful attachment of its property cannot be asserted as a counterclaim in this action and that it cannot seek to reopen this action for any purpose relating

to the purported claim for wrongful attachment, but that all of Defendant's rights relative thereto, if any, are otherwise reserved; and

IT IS FURTHER STIPULATED AND AGREED that the parties have reserved all other rights and remedies.

Dated: November 2, 2007
New York, NY

The Plaintiff
KARAKI NAVIGATION

BY: 

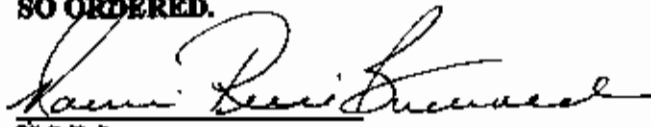
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The Defendant,
BUNGE SA

By: 

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SO ORDERED.


U.S.D.J.

November 5, 2007